Remarks

Claims 1-44 are pending in this application. Applicants respectfully request reconsideration of the above application in view of the following remarks.

Evidence does not demonstrate Toyota's public use of the invention

The Examiner opines that evidence of public use of the claimed invention by Toyota is demonstrated by four periodical references.[1] The Applicants respectfully traverse the sufficiency of the evidence presented by the Examiner.

"The statutory language 'known or used by other in this country' (35 U.S.C. § 102(a)), means knowledge or use which is accessible to the public." *Carella v. Starlight Archery*, 231 USPQ 644 (Fed. Cir. 1986); M.P.E.P. § 2132. At the minimum, the Examiner must proffer evidence of "one well defined case of such use" to apply the public use bar to patentablity. M.P.E.P. § 2133.03(a).

The periodicals cited to by the Examiner do not demonstrate a well defined public use of the claimed invention by Toyota. The Examiner's main argument is that Toyota's public use of a process called "Logistics Continuous Improvement" qualifies as public use prior art under § 102(a), as evidenced by Refs U-X. After careful examination, the Applicants respectfully traverse the Examiner's position that Refs U-X demonstrate such a public use.

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[1] The four references are: "Push is on shorten lead-times for custom car orders," Brian Milligan, Purchasing, Boston, October 7, 1999, Volume 127, Issue 5, page 74 (hereinafter referred to as Ref U, as identified on Examiner's PTO-892 form); "Can Car-Makers Emulate Dell? Toyota Tries," Jeffrey Bodenstab, Wall Street Journal, Brussels, August 31, 1999, page 10 (hereinafter referred to as Ref V); "e-Parcel Delivers for Toyota's Production Control Division," Business/Technology/Automotive Writers, Business Wire, New York, June 1, 1999, page 1 (Ref W); and "Customers Move into the Driver's Seat: Personalized products become viable with the net," Otis Port, Business Week, New York, October 4, 1999, Issue 3649, page 103 (Ref X). The Examiner has clustered these periodicals into one omnibus references dubbed "Toyota" and numbered the pages 1-13. For purposes of consistency, the Applicants retain this referencing scheme.

For instance, Ref U, dated October 7, 1999 (less than one month prior to the Applicants' effective filing date of November 5, 1999), states "Toyota Motor Corp. made headlines recently when a representative said the company is taking steps to quicken the time it takes to build customized Camry Solaras at its manufacturing plant in Canada. The process, called Logistics Continuous Improvement, will allow Toyota to start working on the care five days after an order is made." Toyota, page 1. Ref U also states "Mordue says Toyota's system will take much longer than five days. But it still will represent a shortened leadtime." Toyota, page 2. Ref U does not demonstrate a public use of the Logistics Continuous Improvement system, as evidenced by the use of the language "taking steps" and "will." At best, Ref U indicates that Toyota had the intention of using the LCI process publically at an unspecified time in the future. As such, Applicants respectfully request that the Examiner remove Ref U as evidence of public use. To the contrary, Applicants submit that Ref U is evidence that the LCI process was not in public use at the time of filing (November 5, 1999) of Applicants' application since it was not publically used by October 7, 1999 and one can reasonably infer that bringing the process online took at least a month due to the "sophisticated" nature of the software embodying the LCI process. Toyota, page 1.

Likewise, Ref V, dated August 31, 1999, states "Toyota Motor Corp. announced recently that it will soon begin producing the Camry Solara to customer order in just five days, and will do the same for other models starting later this year." Toyota, page 6. Ref V provides further evidence about the uncertainty regarding Toyota's process: "How much of a competitive advantage can Toyota gain from a five-day car?" Toyota, page 7. At best, Ref V presents evidence of a prospective use of Toyota's process on an unspecified date. A prospective use does not necessarily give rise to an actual use, and further does not satisfy the Examiner's burden of demonstrating a "well defined case" of public use. As such, Applicants respectfully request that the Examiner remove Ref V as evidence of public use of public use of the claimed invention.

Ref W presents a red herring of sorts. The Examiner's reliance on Ref W as evidence of public use of the claimed invention is misplaced. Ref W does not disclose or

suggest Toyota's use of a process for user customized vehicle orders. Instead, Ref W describes a "behind-the-scenes" software product that Toyota uses in its production control division. According to the periodical, "e-Parcel's best-of-class Internet data delivery service provides us with secure and reliable mechanism necessary for our production control. ... Toyota has been using e-Parcel's technology and service to deliver information and updates internally as well as over 2,000 parts venders and manufacturers." Toyota, page 8. In further support of the inapplicability of this periodical to the Applicants' claimed invention, the Examiner does not cite to Ref W in his arguments in support of the § 103(a) rejections. As such, Applicants respectfully request that the Examiner remove Ref W as evidence of public use of the claimed invention.

Ref X, dated October 4, 1999, does not support the Examiner's proposition that the LCI process was in public use prior to the Applicants' effective filing date of November 5, 1999. The author of Ref X makes a passing comment that "General Motors Corp. and Ford Motor Co. will soon join Toyota Motor Corp. in giving the same power to car buyers." Toyota, page 11. The power referred to is "buyers ... tailor[ing] products the way they want them." *Id.* The periodical does not articulate the functionality underlying the Toyota process. Moreover, the periodical's allusion to current public use contradicts Ref U's clear statement that Toyota's LCI process will be used at an unspecified time in the future since Ref U's publication date (October 7, 1999) is after Ref X's publication date (October 4, 1999). Further, Ref X does not reference Toyota's LCI process, making it unclear as to "what" functionality Toyota gave buyers prior to the Applicants' effective filing date. As such, Applicants respectfully request that the Examiner remove Ref U as evidence of public use.

In sum, Applicants respectfully request that the Examiner withdraw his reliance on Refs U-X as evidence of public use of the claimed invention. In the alternative, Applicants respectfully request the Examiner to identify a date certain for Toyota's alleged public use so that the Applicants can fully address this ground of rejection.

Rejection of claims 1-6, 13-31 and 39-44 under § 103(a) as being unpatentable over the Toyota public use in vie of *Henson*

Claims 1-6, 13-31 and 39-44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over a public use of the invention by Toyota in view of U.S. Patent No. 6,167,383 (*Henson*). Applicants respectfully request reconsideration of this rejection of claims 1-9 because (1) the Examiner has not carried his burden of demonstrating that the alleged Toyota public use qualifies as § 102(a) prior art and, alternatively (2) the proposed combination fails to teach, suggest, or disclose various aspects of the rejected claim.

As shown in detail above, the Examiner has not provided sufficient evidence to demonstrate that the alleged Toyota public use qualifies as § 102(a) prior art. As such, the alleged Toyota public use cannot be used in the formulation of the Examiner's obviousness rejection. For at least this reason, Applicants respectfully request reconsideration and allowance of rejected claims 1-6, 13-31 and 39-44.

Further, the proposed combination does not teach, disclose, or suggest the invention as recited in claims 1-6, 13-31 and 39-44. The Examiner acknowledges that the alleged Toyota public use does not provide at least two limitations of claim 1: "storing the order data and product configuration into a buyer database" and "generating an order confirmation message and sending the order confirmation message to the user." The Examiner has also failed to provide evidence that the alleged Toyota public use provides for "canceling the custom order processing of the custom order is initiated and before the custom order is scheduled for manufacturing if a cancel request is received from the user," as recited in claim 1. In support of his position, the Examiner cites to Ref U, which states "[t]he problem now is with last minute changes, whereby a supplier gets a production order and then it is changed...It happens quite frequently now." The author of Ref U casts doubt on whether Toyota's proposed LCI process would be able to handle this problem, and certainly does not teach or suggest the claimed canceling step. The other Toyota periodicals certainly do not point to any functionality that teaches or suggests the canceling step of claim 1. These deficiencies in the teachings of the alleged Toyota public use are not cured by the teachings of *Henson*. *Henson* does not teach, disclose or suggest the canceling step recited in claim 1, and

the Examiner does not present any argument that would indicate otherwise. For at least these reasons, Applicants respectfully request reconsideration and allowance of claim 1, together with claims 2-6 and 13-20 that depend on claim 1.

The proposed combination also does not teach, disclose, or suggest "an order bank operable to: ... cancel the custom order after processing of the custom order is initiated before the custom order is scheduled for manufacturing if a cancel request is received from the user," as recited in claim 21. For at least this reason, Applicants respectfully request reconsideration and allowance of claim 21, together with claims 22-25 that depend on claim 21.

The proposed combination also does not teach, disclose, or suggest "canceling the custom order after processing of the custom order is initiated and before the specified vehicle is scheduled for manufacturing if a cancel request is received from the user," as recited in claim 26. For at least this reason, Applicants respectfully request reconsideration and allowance of claims 26, together with claims 27-31 and 39-44 that depend on claim 26.

Rejection of claims 7-12 and 32-38 under § 103(a) as being unpatentable over the Toyota public use in view of *Henson* and *Green*

Claims 7-12 and 32-38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over a public use of the invention by Toyota in view of *Henson*, in further view of U.S. Patent No. 6,041,310 (*Green*). Applicants respectfully request reconsideration of this rejection of claims 1-9 because (1) the Examiner has not carried his burden of demonstrating that the alleged Toyota public use qualifies as § 102(a) prior art and, alternatively (2) the proposed combination fails to teach, suggest, or disclose various aspects of the rejected claim.

For reasons similar to those discussed above with regard to claim 1, the alleged Toyota public use and *Henson* combination does not provide the features and operation recited in claim 7-12, which depend on claim 1. For example, the proposed Toyota-*Henson* reference does not teach, disclose, or suggest "canceling the custom order processing of the custom

order is initiated and before the custom order is scheduled for manufacturing if a cancel request is received from the user," as recited by claim 1. Because this deficiency is not cured by *Green*, the combination of references does not disclose, teach, or suggest the invention as recited in claims 7-12. For at least these reasons, and for those stated above with respect to claim 1, Applicants respectfully request reconsideration and allowance of claims 7-12 that depend on claim 1.

For reasons similar to those discussed above with regard to claim 26, the alleged Toyota public use and *Henson* combination does not provide the features and operation recited in claim 32-38, which depend on claim 26. For example, the proposed Toyota-*Henson* reference does not teach, disclose, or suggest "canceling the custom order processing of the custom order is initiated and before the custom order is scheduled for manufacturing if a cancel request is received from the user," as recited by claim 26. Because this deficiency is not cured by *Green*, the combination of references does not disclose, teach, or suggest the invention as recited in claims 32-38. For at least these reasons, and for those stated above with respect to claim 26, Applicants respectfully request reconsideration and allowance of claims 32-38 that depend on claim 26.

Conclusion

For the foregoing reasons, Applicants believe that the Office Action of February 19, 2004 has been fully responded to. Consequently, in view of the above amendments and remarks, Applicants respectfully submit that the application is in condition for allowance, which allowance is respectfully submitted.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Matthew M. Jakubowski, Attorney for Applicants, at Examiner's convenience at (248) 358-4400.

Although no fees are believed due, the Commissioner is hereby authorized to charge any additional fee or credit any overpayment in connection with this filing to Deposit Account No. 06-1510 (Ford Global Technologies, Inc.). A duplicate of this notice is enclosed for this purpose.

Respectfully submitted,

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Date: **April 12, 2004**

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